

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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NEW YORK STATE RESTAURANT ASSOCIATION,

Plaintiff, **ANSWER**
-against-
08 Civ. 1000 (RJH)

NEW YORK CITY BOARD OF HEALTH, NEW YORK
CITY DEPARTMENT OF HEALTH AND MENTAL
HYGIENE, and THOMAS R. FRIEDEN, In His Official
Capacity as Commissioner of the New York City
Department of Health and Mental Hygiene,

Defendants.

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Defendants the New York City Board of Health (“Board of Health”), the New York City Department of Health and Mental Hygiene (“DOH”), and Thomas R. Frieden, in his official capacity as Commissioner of DOH, by their attorney, Michael A. Cardozo, Corporation Counsel of the City of New York, for their answer to the complaint, respectfully allege as follows:

1. Deny the allegations set forth in paragraph “1” of the complaint, and respectfully refer the Court to the legal authorities cited therein for their true content and effect, except admit that plaintiff purports to proceed as set forth therein.
2. Deny the allegations set forth in paragraph “2” of the complaint, and respectfully refer the Court to the legal authorities referenced therein for their true content and effect.
3. Deny the allegations set forth in paragraph “3” of the complaint, and respectfully refer the Court to the legal authorities referenced therein for their true content and effect.

4. Deny the allegations set forth in paragraph “4” of the complaint.
5. Deny the allegations set forth in paragraph “5” of the complaint, except admit that plaintiff purports to proceed as set forth therein.
6. Admit the allegations set forth in paragraph “6” of the complaint.
7. Deny the allegations set forth in paragraph “7” of the complaint, except admit that this Court has jurisdiction under 28 U.S.C. § 1333(a)(3).
8. Admit the allegations set forth in paragraph “8” of the complaint.
9. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “9” of the complaint.
10. Deny the allegations set forth in paragraph “10” of the complaint, and respectfully refer the Court to the New York City Charter provision cited therein for its true content and effect, except admit that that the Board of Health adopted New York City Health Code (“Health Code”) § 81.50.
11. Deny the allegations set forth in paragraph “11” of the complaint, and respectfully refer the Court to the New York City Charter provision cited therein for its true content and effect, except admit that that DOH will enforce Health Code § 81.50.
12. Deny the allegations set forth in paragraph “12” of the complaint, and respectfully refer the Court to the New York City Charter provisions cited therein for their true content and effect.
13. Deny the allegations set forth in paragraph “13” of the complaint, and respectfully refer the Court to the legal authority cited therein for its true content and effect.
14. Deny the allegations set forth in paragraph “14” of the complaint, and respectfully refer the Court to the legal authority cited therein for its true content and effect.

15. Deny the allegations set forth in paragraph “15” of the complaint, and respectfully refer the Court to the legal authority referenced therein for its true content and effect.

16. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “16” of the complaint.

17. Deny the allegations set forth in paragraph “17” of the complaint.

18. Deny the allegations set forth in paragraph “18” of the complaint, except admit that on January 22, 2008, the Board of Health adopted Health Code § 81.50, and respectfully refer the Court to Health Code § 81.50 for its true content and effect.

19. Deny the allegations set forth in paragraph “19” of the complaint, and respectfully refer the Court to Health Code § 81.50 for its true content and effect.

20. Deny the allegations set forth in paragraph “20” of the complaint.

21. Deny the allegations set forth in paragraph “21” of the complaint.

22. Deny the allegations set forth in paragraph “22” of the complaint.

23. Deny the allegations set forth in paragraph “23” of the complaint.

24. In response to paragraph “24” of the complaint, repeat the responses to paragraphs “1” through “23” as if fully set forth herein.

25. Deny the allegations set forth in paragraph “25” of the complaint, and respectfully refer the Court to the legal authority referenced therein for its true content and effect.

26. Deny the allegations set forth in paragraph “26” of the complaint, and respectfully refer the Court to the legal authorities referenced therein for their true content and effect.

27. Neither admit nor deny the allegations set forth in paragraph "27" of the complaint, as it constitutes argument or conclusions of law to which no response is required, however, should the Court deem a response necessary, deny the allegations.

28. Deny the allegations set forth in paragraph "28" of the complaint.

29. In response to paragraph "29" of the complaint, repeat the responses to paragraphs "1" through "28" as if fully set forth herein.

30. Deny the allegations set forth in paragraph "30" of the complaint, and respectfully refer the Court to the legal authority referenced therein for its true content and effect.

31. Deny the allegations set forth in paragraph "31" of the complaint.

32. Deny the allegations set forth in paragraph "32" of the complaint.

33. Deny the allegations set forth in paragraph "33" of the complaint.

34. Deny the allegations set forth in paragraph "34" of the complaint.

35. Neither admit nor deny the allegations set forth in paragraph "35" of the complaint, as it constitutes argument or conclusions of law to which no response is required, however, should the Court deem a response necessary, deny the allegations.

36. Deny that plaintiff is entitled to any of the relief sought in the "Wherefore clause."

AFFIRMATIVE DEFENSES

37. The complaint fails to state a claim upon which relief can be granted.

38. The Defendants have not violated any rights, privileges, or immunities reserved to the plaintiff by the Constitution or laws of the United States, nor have the Defendants violated any act of Congress.

39. The Defendants acted properly and in accordance with all applicable laws and regulations, and thus are immune from liability.

WHEREFORE, Defendants demand judgment dismissing the complaint, awarding them costs and disbursements in this action, including reasonable attorneys' fees, and granting such other and further relief as the Court may deem just and proper.

Dated: New York, New York
February 20, 2008

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